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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,729	06/20/2005	Karl Heinz Schmid	C 2749 PCT/US	8603

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COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1796

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07/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,729	Applicant(s) SCHMID ET AL.
	Examiner Gregory R. Del Cotto	Art Unit 1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

ETAILED ACTION

1. Claims 1-13 have been canceled. Claims 14-40 are pending. Applicant's amendments and arguments filed 4/8/08 have been entered.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 1/28/08 have been withdrawn:

The rejection of claims 18, 19, 33, and 34 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 14-18, 20-33, and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 10102009. Note that, Schmid et al (US 2004/0067213), as pointed out on the attached US PTO-1449, is an English language equivalent of DE 10102009 and therefore, has been used as a translation of DE 10102009.

Schmid et al teach a preparation of at least one acylated amino acid and at least one protein condensate. See para. 1. The preparations are preferably laundry and dishwashing detergents, Cleaners, and also cosmetic and/or pharmaceutical preparations. See para. 27. Typical liquid laundry and dishwashing detergents and cleaners preferably have the following composition: 2 to 30% by weight of the mixture of at least one acylated amino acid and at least one protein condensate, 0.05 to 15% by weight of betaines and optionally 2.5 to 30% by weight of other anionic surfactants. See paras. 34-37. Acylated amino acids are any compounds which are obtainable by acylation of amino acids with fatty acid halides. Preferred acylated amino acids are obtained by reaction of glutamic acid, sarcosine, aspartic acid, alanine, valine,

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etc., with fatty acid halides. See paras. 11-13. The protein condensates have degrees of acylation of 40 to 99% by weight based on the active substance content. These degrees of acylation are determined on the basis of the difference between the fatty acid used and the free fatty acid. See para. 16. Protein hydrolyzates are degradation products of vegetable proteins, for example wheat, rice, soya, protein from marine animals, etc. See para. 17. Note that, the Examiner asserts that the amount of protein hydrolyzate and protein condensate present in the compositions taught by Schmid et al is calculated in the same manner as set forth on page 22 of the instant specification.

Electrolytes such as sodium chloride and ammonium chloride may be used as consistency factors. See para. 51. Antioxidants which interrupt the photochemical reaction chain that is initiated when UV rays penetrate in to the skin may also be added and include amino acids such as glycine, histidine, tyrosine, etc., citric acid, etc. Hydrotropes may also be added to the composition and include ethanol, glycerol, ethylene glycol, propylene glycol, etc. See paras. 59-72. The total percentage of auxiliaries and additives may be from 1 to 80% by weight based on the particular preparation. See para. 79.

Schmid et al do not teach, with sufficient specificity, a detergent mixture containing a protein fatty acid condensate, a protein hydrolyzate, an acylated amino acid, an amino acid, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a detergent mixture containing a detergent mixture

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containing a protein fatty acid condensate, a protein hydrolyzate, an acylated amino acid, an amino acid, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Schmid et al suggest a detergent mixture containing a protein fatty acid condensate, a protein hydrolyzate, an acylated amino acid, an amino acid, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 19 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 10102009 as applied to claims 14-18, 20-33, and 35-40 above, and further in view of Ziganke et al (US 2001/0031712).

'009 (i.e. Schmid et al (US 2004/0067213) is relied upon as set forth above.

However, '009 does not teach the use of ammonium or alkanolamine salts of components (a) -(d) in addition to the other requisite components of the composition as recited by the instant claims.

Ziganke et al teach a surfactant combination that contains one or more alkyl ether sulfates, one or more alkyl sulfonates, and one or more amphoteric surfactants. See Abstract. Suitable amphoteric surfactants include acylated amino acids, etc. See para. 28. The acylated amino acids may also be used in the form of an alkali metal salt, an alkaline earth metal, or an alkanolammonium salt, for example mono-, di-, or triethanolamine. See para. 78.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a monoethanolamine or triethanolamine salt of an acylated amino acid in the composition taught by '009, with a reasonable expectation of success, because Ziganke et al teach the equivalence of sodium and monoethanolamine salts of acylated amino acids in a similar detergent composition and further, '009 teaches the use of sodium salts of acylated amino acids in general. Note that, with respect to ammonium and alkanolamine salts of a protein fatty acid condensate, a protein hydrolyzate, and an amino acid as recited by instant claims 19 and 34, the Examiner asserts that alkali metal, ammonium, as well as alkanolamine salts of these components are notoriously well-known to those of one of ordinary skill in the art similar to the acyl amino acids salts as taught by Ziganke et al, and one skilled in the art would have had a reasonable expectation of success to use ammonium or alkanolamine salts of these components in the composition taught by '009.

Response to Arguments

With respect to the rejection of the instant claims under 35 USC 103 using Schmid et al (i.e. DE 10102009), Applicant states that that broad disclosure in Schmid et al of several components in Applicant's claims does not expressly or impliedly disclose the invention as claimed. Further, Applicant states that although Schmid et al disclose protein condensates, protein hydrolyzates, and acylated amino acids, Schmid et al do not disclose the addition of an amino acid or the specific combination or amounts of components as set forth in claim 14. In response, note that, the Examiner asserts that the teachings of a reference are not limited to the preferred embodiments and that

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the broad teachings of Schmid et al suggest compositions containing the same components in the same amounts as recited by the instant claims. For example, as set forth above, Schmid et al teach laundry and dishwashing compositions containing from 2 to 30% by weight of at least one acylated amino acid and at least one protein condensate which overlaps with the amounts of these components as recited by the instant claims.

Furthermore, Schmid et al teach the use of various auxiliary materials which may be used in amounts from 1 to 80% by weight including antioxidants such as glycine, histidine, tyrosine, etc., (See paras. 59 and 79) and the Examiner asserts that this range would clearly overlap with "1 to 12% by weight of an amino acid" as recited by the instant claims. Additionally, the Examiner asserts that Applicant has provided no data showing the unexpected and superior properties of the claimed invention in comparison to compositions falling outside the scope of the instant claims. Thus, the Examiner asserts that the teachings of Schmid et al are sufficient to render the instant claims obvious under 35 USC 103.

With respect to the rejection of the instant claims under 35 USC 103 using Schmid et al in view of Ziganke, Applicant states that the addition of the salt forms of the acylated amino acids in Ziganke to the disclosure of Schmid et al does not cure the deficiencies of Schmid et al, in view of the lack of disclosure in Schmid et al relating to the addition of an amino acid as claimed. In response, note that, the Examiner maintains that Schmid et al is sufficient to suggest the composition as recited by the instant claims including the use of an amino acid in the specific amounts as recited by

the instant claims as pointed out above (See paras. 59 and 79 of Schmid et al). Ziganke is a secondary reference relied upon for its teaching of ammonium or alkanolamine salts of components (a) -(d). The Examiner asserts that one of ordinary skill in the art clearly would have been motivated to use a monoethanolamine or triethanolamine salt of an acylated amino acid in the composition taught by '009, with a reasonable expectation of success, because Ziganke et al teach the equivalence of sodium and monoethanolamine salts of acylated amino acids in a similar detergent composition and further, '009 teaches the use of sodium salts of acylated amino acids in general. Note that, with respect to ammonium and alkanolamine salts of a protein fatty acid condensate, a protein hydrolyzate, and an amino acid as recited by instant claims 19 and 34, the Examiner asserts that alkali metal, ammonium, as well as alkanolamine salts of these components are notoriously well-known to those of one of ordinary skill in the art similar to the acyl amino acids salts as taught by Ziganke et al, and one skilled in the art would have had a reasonable expectation of success to use ammonium or alkanolamine salts of these components in the composition taught by '009.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

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/G. R. D./
July 14, 2008